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REMARKS

Applicants have carefully studied the outstanding Office Action. The present response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application is respectfully requested.

Status of Claims

Claims 1-28 are pending. Claims 29-30 have been added and claims 9 and 20 have been cancelled, without prejudice. Claims 1, 10-12, 16-19, and 25-26 have been amended. The amendments and additions to the claims add no new matter.

At least the amendments to claims 10-12, 16-18 and 25 are not being made for reasons of patentability and do not narrow the scope of the claims. These amended claims are not subject to the complete bar against the use of the Doctrine of Equivalents as outlined in *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*

Telephone Interview

Applicants wish to thank the Examiner, Mary J. Steelman for granting and attending the telephone interview held on Wednesday, December 8, 2004, with Applicants' Representative, Caleb Pollack, Reg. No. 37,912. During the interview, Applicants proposed to amend various limitations from claims 2 and 9 into claim 1. US Patent 5,003,591 to Kaufman et al. ("Kaufman") and US Publication 2002/0166061A1 to Falik et al. ("Falik") were discussed. Applicants representative asserted that the proposed amendments overcame the prior art of record. The Examiner agreed to consider these arguments and amendments, when submitted in a formal response, but further agreement was not reached.

Claim Objections

The Examiner objected to claim 25 as having an improper dependency. Applicants have corrected this typographical error so that claim 25 correctly depends from claim 19.

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35 U.S.C. § 102(b) Rejection

The Examiner rejected claims 1-8 and 19-28 under 35 U.S.C. § 102(b) as being unpatentable over US Patent 5,003,591 to Kaufman et al. ("Kaufman"). Applicants respectfully traverse the rejection of claims 1-8 and 19-28 under 35 U.S.C. § 102(b) as being unpatentable over Kaufman.

Applicants' claim 1, as amended, includes, inter alia, "verifying for said at least one of said drivers if said firmware has been downloaded by another function."

Applicants' claim 19, as amended, includes, inter alia, "a processor adapted ... to reduce a risk of at least one of said drivers overwriting firmware that has been downloaded and is being used by another of said drivers."

Applicants' claim 26, as amended, includes, inter alia, "a processor adapted ... to verify for said at least one of said drivers if said firmware has been downloaded by another function".

In order for a reference to anticipate a claim the reference must teach every element of the claim being rejected.

As discussed during the telephone interview, Kaufman does not include reducing the risk that a driver overwrites firmware, as taught by the above described independent claim 19. In addition, Kaufman does not include, and the Examiner does not assert that Kaufman includes, verifying if a driver has been downloaded by another function, as variously taught by the above described independent claims 1 and 26.

Kaufman describes a cable television converter that includes default software, where if a download of software is unsuccessful, the default software is used. (See Kaufman, col. 2, ll. 44-59). Kaufman verifies the integrity of the downloaded software; if the verification fails, the already installed default software is used. This feature does not equate to reducing the risk that a driver overwrites firmware. Kaufman does not deal with the problem of determining if software has been or will be overwritten. Verification of transmitted data such as downloaded software is a general and known concept in the computer arts, and is unrelated to the subject of, and cannot be considered to obviate or anticipate, a system or method solving a problem of possible overwriting of firmware.

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Further, Kaufman's teachings regarding verification are unrelated to the subject of, and cannot be considered to obviate or anticipate, a system or method which verifies if a driver has been downloaded by another function. Kaufman verifies the integrity of a download, not if a download of a specific data item (e.g., firmware) has already occurred.

Therefore, Applicants submit that independent claims 1, 19 and 26, as amended, are allowable over Kaufman. Each of dependent claims 2-8, 20-25, and 27-28 depend directly or indirectly from one of independent claims 1, 19 and 26, as amended and thereby include all of the elements of such independent claims; therefore dependent claims 2-8, 20-25, and 27-28 are likewise allowable. Applicants therefore request that the Examiner withdraw the rejection of claims 1-8 and 19-28 under 35 U.S.C. § 102(b) as being unpatentable over Kaufman.

35 U.S.C. § 103(a) Rejection

The Examiner rejected claims 9-18 under 35 U.S.C. § 103(a) as being unpatentable over Kaufman in view of US Publication 2002/0166061A1 to Falik et al. ("Falik"). Applicants respectfully traverse the rejection of claims 9-18 under 35 U.S.C. § 103(a) as being unpatentable over Kaufman in view of Falik.

As discussed above, claim 1 is allowable over the prior art of record. Falik does not cure the deficiencies of Kaufman. Claim 9 has been cancelled and claim 1 has been amended to include elements of claim 9.

As discussed during the telephone interview, Falik does not teach the limitation of verifying if firmware has been downloaded by another function. Kaufman also does not teach this limitation. Falik describes a system to determine if the contents of a memory are valid, and to provide access to a memory. (See Falik, paragraphs 37, 64). Such standard operations do not equate to, and cannot be considered to obviate, a system or method which verifies if firmware has been downloaded by another function. Falik does not deal with the problem of determining if software has been already downloaded, but merely determines if memory blocks are valid or if processes can gain access to memory blocks.

Claim 9 has been cancelled, and claim 1 now includes limitations of claim 9. Applicants submit that claim 1 and claims 10-18 are allowable over Falik and Kaufman, alone or in combination. Thus Applicants respectfully request that the Examiner withdraw

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the rejection of claims 9-18 under 35 U.S.C. § 103(a) as being unpatentable over Kaufman in view of Falik.

New Claims

Applicants have added new claims 29-30. Independent claim 29 includes, inter alia, "reducing a risk of at least one of said drivers overwriting firmware that has been downloaded and is being used by another of said drivers." For at least the reasons that claim 29 includes this limitation (discussed above), claim 29 is allowable over the cited prior art.

Claim 30 depends from one of allowable claims 29, and therefore claim 30 is likewise allowable.

Conclusion

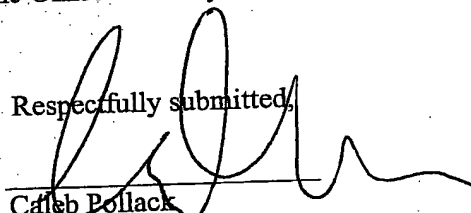
Applicants submit that, for at least the reasons presented above, Applicants' claims are patentable. Their favorable reconsideration and allowance is respectfully requested.

Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

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The fee for the petition for a one-month extension of time is being requested separately. The Office is authorized to charge such to Deposit Account 05-0649 the \$300 in fees for new claims 29-30. No other fees are believed to be due in connection with this paper. However, if any such fees are due, the Office is hereby authorized to charge such fees to Deposit Account 05-0649.

Respectfully submitted,


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